

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 889 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
Yes to the learned trial Magistrate wherever he
is and to all Criminal Courts.

STATE OF GUJARAT

Versus

MER JIVA RANMAL

Appearance:

Shri S.T.Mehta, Additional Public Prosecutor, for
the Appellant - State.

Shri P.B.Bhatt, Advocate, for the Respondent -
Accused (Appointed).

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/09/96

ORAL JUDGEMENT

It is said: "A little learning is a dangerous
thing". How the little learning of law on the part of

the learned Judicial Magistrate, First Class, at Mangrol has dangerously resulted in mockery or travesty of justice is very well reflected in this case wherein the order of releasing the respondent herein on probation under Section 4 (3) of the Probation of Offenders Act, 1958 (the Act for brief) passed on 28th May 1985 below the Application at Exh.25 in Criminal Case No.27 of 1984 is under challenge under Section 11 (2) thereof read with Section 377 (1) of the Code of Criminal Procedure, 1973 (the Cr.PC for brief).

2. This case has a somewhat chequered history. The respondent herein appears to have committed offences punishable under Sections 326 and 506 (2) of the Indian Penal Code, 1860 (the IPC for brief) by severely beating the complainant, named, Dudabhai Samatbhai Mer, at about 10.30 a.m. on 31st December 1983. The necessary chargesheet was presented in the Court of the learned Judicial Magistrate, First Class, at Mangrol on 15th February 1984. It came to be registered as Criminal Case No.27 of 1984. The charge against the respondent was framed on 2nd March 1984. It is at Exh.4 on the record of the case in the trial court. The accused did not plead guilty to the charge. In that case, according to the well settled principles of law, the learned trial Magistrate was required to proceed with the trial of the case by recording evidence and carrying the trial to its logical conclusion. For some mysterious and unknown reasons, the learned trial Magistrate (I wonder whether he can be called 'learned' in that context) proceeded to call for the probation report as if he had determined to grant probation to the respondent herein well in advance. The learned trial Magistrate might have been justified in calling for the probation report under the Act if the respondent as the accused had pleaded guilty to the charge. When there was no plea of guilt to the charges framed, the learned trial Magistrate had no option but to proceed with the trial of the case by recording evidence and proceeding with the case according to law. Instead, as pointed out hereinabove, presumably with a predetermined mind of granting probation to the respondent herein as the accused, the learned trial Magistrate called for the probation report. With respect, the learned trial Magistrate has by adopting such dubious course exhibited his total ignorance of even elementary principles of law. Such approach on the part of the learned trial Magistrate deserves condemnation in the strongest possible language so as to deter other judicial officers of the like category from treading such dangerous path resulting in mockery and travesty of justice.

3. It may be mentioned at this stage that, after framing the charge on 2nd March 1984 at Exh.4 on the record of the case, the learned Additional Public Prosecutor made an application that the complainant, being the injured victim of the offence alleged to have been committed by the respondent herein as the accused, was the Sarpanch of Village Antroli and was therefore a Public Servant within the meaning of Section 21 of the IPC and as such the respondent herein would be guilty of the offence punishable under Section 333 of the IPC and the accused would be triable by the Court of Sessions. Its copy is at Exh.6 on the record of the case. By his order passed on 21st May 1984 therebelow, the learned trial Magistrate rejected that application on the ground that the Sarpanch of a Village Panchayat is not a Public Servant. That matter was carried in revision before the Sessions Court at Junagadh. It came to be registered as Criminal Revision Application No.90 of 1984. By his order passed on 15th January 1985 in the aforesaid revisional application, the learned Sessions Judge did not think it fit to interfere with the aforesaid order passed by the learned trial Magistrate on the ground that, if it was found in the course of trial that an offence punishable under section 333 of the IPC was made out, the learned trial Magistrate should commit the case for trial to the Sessions Court in accordance with law and in accordance with the provisions contained in Section 323 of the Cr.PC. Its copy is at Exh.22 on the record of the case. The aforesaid decision of the learned Sessions Judge was a clear pointer to the learned trial Magistrate that he was required to proceed with the case and to conduct the trial by recording evidence. It appears that the learned trial Magistrate did not receive any hint even from the aforesaid decision of the learned Sessions Judge. In the meantime, the Probation Officer's report was received. Its copy is at Exh.18 on the record of the case. Recommendation for grant of probation was made therein. It appears that, only thereafter, the respondent herein as the accused made one application on 30th April 1985 requesting the court for grant of probation to him. Its copy is at Exh.25 on the record of the case. It appears that the learned Additional Public Prosecutor raised a strong objection to the grant of probation at that stage by causing his reply thereto on that very day, that is, on 30th April 1985. Its copy is at Exh.26 on the record of the case. After hearing the parties, by his order passed on 28th May 1985 below the Application at Exh.25 in Criminal Case No.27 of 1984, the learned trial Magistrate ordered releasing the respondent herein on probation for one year under Section 4 (3) of

the Act on obtaining a bond of Rs.1000 for his good behaviour and he was ordered to be placed under the supervision of the Probation Officer during the period of probation. The aggrieved prosecution agency has thereupon approached this court by means of this appeal under Section 11 (2) of the Act read with Section 377 (1) of the Cr.PC for questioning the correctness of the aforesaid order passed by the learned trial Magistrate below the Application at Exh.25 in Criminal Case No.27 of 1984.

4. Learned Advocate Shri Bhatt for the respondent has raised a preliminary objection against maintainability of this appeal under Section 11 (2) of the Act read with Section 377 (1) of the Cr.PC on the ground that such appeal would lie to the concerned Court of Sessions according to law. As rightly submitted by learned Additional Public Prosecutor Shri Mehta for the appellant, the binding Division Bench ruling of this court in the case of STATE OF GUJARAT v. PURANI JAGATPAWANDAS GURU BHAKTI JIWANDAS reported in (1981) 22 Gujarat Law Reporter at page 895 provides a complete answer to the aforesaid submission urged on behalf of the respondent. It has clearly been held therein that an appeal inter alia against the order under Section 4 of the Act would lie to this court meaning thereby to this High Court under Section 11 (2) of the Act read with Section 377 (1) of the Cr.PC.

5. Sitting as a single Judge, the aforesaid Division Bench ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith. It is on all fours applicable in the present case. The impugned order passed by the learned trial Magistrate is under Section 4 of the Act. It is appealable to this court under Section 11 (2) thereof read with Section 377 (1) of the Cr. PC in view of the aforesaid binding Division Bench ruling of this court.

6. It is an admitted position on record that the respondent herein was charged inter alia with the offence punishable under Section 326 of the IPC. The punishment prescribed therefor inter alia is imprisonment for life. The very language of Section 4 of the Act excludes from its purview an offence which is punishable with imprisonment for life. It is unfortunate that the learned trial Magistrate has not cared to read the clear language of the aforesaid statutory provision. It leaves no room for doubt that no probation can be granted when a person is charged with an offence punishable with imprisonment for life. It appears that the learned trial

Magistrate's knowledge of English is also very poor to say the least inasmuch as he has not properly understood read the clear language of Section 4 of the Act.

7. No authority is needed for the proposition of law that an offence punishable with imprisonment for life is outside the purview of Section 4 of the Act. However, if one is needed, a reference deserves to be made to the binding ruling of the Supreme Court in the case of JUGAL KISHORE PRASAD v. STATE OF BIHAR reported in AIR 1972 Supreme Court at page 2522. In that case, the accused was found guilty of the offence punishable under Section 326 read with Section 149 of the IPC. In that context, it has been held:

"Plain reading of section 6 makes it manifest that it deals with persons under twenty-one years of age who are found guilty of having committed an offence punishable with imprisonment but not with imprisonment for life. As imprisonment for life can also be awarded for the offence under section 326 read with S.149 Indian Penal Code, a person found guilty of such an offence would not be entitled to claim the benefit of Section 6. To hold otherwise, would have the effect of ignoring the words "but not with imprisonment for life" and treating them to be otiose -Such a construction is plainly not permissible. It is not correct to say that the offences excluded from the purview of the section are only those offences wherein punishment prescribed is imprisonment for life and not for a lesser term. The plain meaning of the section is that the section cannot be invoked by a person who is convicted for an offence punishable with imprisonment for life. The fact that imprisonment for a lesser term can also be awarded for the offence would not take it out of the category of offences punishable with imprisonment for life. The policy underlying the Act appears to be that it is only in cases of not very serious nature, viz. offences not punishable with imprisonment for life that the convicted person should have the benefit of provisions of the Act. Where, however, the offence for which a person has been convicted is of a serious nature punishable with imprisonment for life, the benefit of the Act would not be permissible in his case."

The aforesaid ruling of the supreme Court is on all fours

applicable in the present case. In the present case also, the respondent has been charged inter alia with the offence punishable under Section 326 of the IPC. As pointed out hereinabove, it is punishable inter alia with imprisonment for life. In that view of the matter, no benefit under Section 4 of the Act can be granted to him.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order passed by the learned trial Magistrate below the Application at Exh.25 in Criminal Case No.27 of 1984 cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to the Court of the Judicial Magistrate, First Class, at Mangrol for restoration of the proceeding to file and for proceeding with it according to law. It is unfortunate that the respondent herein will have to face the trial even after a passage of 12 years.

9. In the result, this appeal is accepted. The order passed by the learned Judicial Magistrate, First Class, at Mangrol on 28th May 1985 below the Application at Exh.25 in Criminal Case No.27 of 1984 is quashed and set aside. The matter is remanded to the learned trial Magistrate for restoration of the proceeding to file and for proceeding according to law.

10. The Registry of this court is directed to place a copy of this judgment before the learned Chief Justice for his kind perusal and for his necessary action, if any and if deemed fit, just and proper on the facts and in the circumstances of the case.

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